

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6268 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI CHIMANBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

Mr.R.M.CHAUHAN, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/12/97

ORAL JUDGEMENT

The criminal proceedings in the form of complaint bearing Crime Register No.I-83 of 1997 lodged by the petitioner herein at Amod Police Station are sought to be quashed by the complainant himself.

2. The incident, stated in the complaint, is alleged to have taken place on 17.10.1997 at about 9.00 p.m. The

complaint in respect of the incident came to be lodged on 18.10.1997. The facts alleged in the complaint indicate that at about 8.00 p.m. on 17.10.1997 the complainant along with Ambubhai and others had gone to the house of Sarpanch of the village and after waiting there for about an hour they left at about 9.00 p.m. when 15 persons named in the complaint along with others alleged to have been armed with sticks and iron pipes by uttering abusive language reached the place and asked as to why the complainant and others had gone to the house of Sarpanch. One Usman Mindi is alleged to have inflicted blow with iron pipe in his hand on the right side of the complainant's head and one Mustak Ismail gave stick blow on the back side of the chest. It is further the case of the complainant that one Salim Ismail and his brother Inchi armed with iron pipe inflicted blow to one Ambushana and damaged the cot lying outside. It is further the case of the complainant that complainant thereupon went inside the house belonging to Ambubhai and all the accused entered the said house and had taken away cash and ornaments worth Rs.6,000/- from the house of Ambubhai. It is further the case of the complainant that Taraben, wife of Ambubhai, and Ganpatbhai Barmal Vasava were also injured by sticks. It is finally alleged that the cause for the happening of incident was on account of dispute which had cropped up while the children were playing the cricket. It is under such circumstances that the complaint under Section 143, 147, 149, 452, 394, 504, 324, 323 I.P.C. came to be lodged as aforesaid. The provisions of Section 379, 395 I.P.C. were also stated in the complaint.

3. It is the case of the complainant that the offences under Sections 451, 504, 324, 323 I.P.C. being compoundable offences have been compounded between the parties. Considering the allegations levelled in the complaint with regard to the other offences it is the case of the complainant that at best the offence under Section 379 I.P.C. might be disclosed, but by no stretch of imagination offences under Section 394 and 395 I.P.C. could be invoked.

4. Today Taraben is present before the Court and she submits, on being asked as to what had happened in so far as she was concerned, nothing had happened. Ambubhai is also present before the Court and he submits that the cash amount stated to have been lost from his house was received and the ornaments were lying in the open space adjacent to the house and that he found them. Maganbhai Chimanbhai, the complainant, is present before the Court and he adheres to what has been stated in this petition.

He submits that the case has been compounded in so far as he is concerned. Thus what he has stated in the petition appears to be true in so far as compounding of the offences of Section 323 and 324 and other aforesaid provisions of I.P.C. are concerned.

5. Immediately after lodging of the F.I.R. this petition was filed and following order was passed by this Court (Coram : D.G.Karia, J., as he then was) on 24.10.1997 :

Rule returnable on 17.11.1997. Mr.N.D.Gohil, learned A.P.P. waives services of Rule on behalf of respondent - State. Interim relief in terms of Para : 7(B). D.S.Permitted."

6. The Investigating Officer is present before this Court. He has nothing to submit before this Court in view of what has transpired from the petition itself.

7. Under the aforesaid circumstances the complainant himself is before this Court for quashing of his own complaint.

8. Mr.Saurin Shah, learned Advocate appearing for the petitioner has placed reliance upon a decision of this Court (Coram: M.H.Kadri, J.) rendered on 6.6.1997 in Criminal Misc. Application No.3144 of 1997. In that case also one of the offences is alleged to have been committed under Section 383 read with 334 and 104 I.P.C. This Court observed -

"However, ld.Advocate for the petitioner

Mr.Saurin Shah has placed reliance on the judgment of the Madras High Court reported in 1995(2) Crimes 104 wherein it is held that, when the relations between the complainant and the accused had become cordial and the disputes were settled, the non-compoundable offence can be quashed. Ld.Advocate for the petitioner has also placed reliance on the judgment of Punjab & Haryana High Court reported in II - 1994(1) Crimes 482 wherein the same principle has been reiterated. In similar way, the ld. Advocate for the petitioner has placed reliance on the judgment of this Court (Coram : M.S.Parikh, J.) granted in Special Criminal Application No.1022/96. The ld. Advocate for the petitioner has also placed reliance on the judgment rendered by this Court (Coram : D.G.Karia, J.) in Special Criminal Application No.1697/95 and the judgment

rendered by this Court (Coram : S.D.Dave, J.) in
Special Criminal Application No. 485/96."

The ratio which has been culled out by this Court in the aforesaid quashing matter is that even if the offences were not compoundable the parties having settled their disputes amicably the permission to compound the offences may be granted and the proceedings might be quashed. In that case the criminal proceedings were initiated whereas in the present case by virtue of the first order passed in this proceeding the matter has not advanced any further. Under such circumstances bearing in mind the facts of the case and the statements made by the concerned persons before this Court this is a fit case where the complaint in question deserves to be quashed, one of the reasons being compounding of the matter between the parties.

9. Following order is therefore passed :

This Application is allowed. The complaint being Crime Register No.I-83/97 registered at Amod Police Station is hereby quashed and set aside. Rule made absolute accordingly.

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